

# Abuse, Neglect and Exploitation In Licensed Facilities

- ✓ Recognize it
- ✓ Prevent it
- ✓ Report it

**May 8, 2009**



*Department of Health  
and Human Services*

*Maine People Living  
Safe, Healthy and Productive Lives*

*John E. Baldacci, Governor*

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## INTRODUCTION

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In Maine there are approximately 15,500 beds in licensed nursing facilities and assisted living facilities.

This booklet is a guide for facility staff regarding abuse, neglect and exploitation of residents: how to recognize it, how to prevent it, and responsibilities for reporting it. It was developed by the Office of Elder Services (OES) which is part of the Maine Department of Health and Human Services.

The Department recognizes the responsibility of facility staff to assure the welfare and safety of their residents. At the same time, we recognize that the care of adults residing in long-term care facilities is a demanding and often difficult job. Unfortunately, there will be times when family members or staff of the facility may abuse, neglect or exploit residents. In addition, almost all facilities have experienced problems with patients abusing one another.

The Department is responsible for investigating reports of abuse, neglect and exploitation of incapacitated and dependent adults and for protecting incapacitated and dependent adults in danger or at substantial risk of danger. OES staff is available at no charge to train facility staff on site on the subject of abuse, neglect and exploitation and mandatory reporting. For more information, contact the OES Program Administrators for Protective Services in your region's Department of Health and Human Services (DHHS) office. The addresses and phone numbers are on page 12.

The Department's goal is to maintain a partnership with facilities that will assure the protection of residents and the preservation of their rights.

## DEFINITIONS AND INDICATORS

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### Definition of Abuse

**"Abuse"** means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless "phase" includes acts of omission deprivation of essential needs (22 MRSA §3472).

The cases described briefly below are examples of cases referred to the Department:

95 year old woman, nursing home resident, physically and sexually abused by son-in-law and grandson during visits.

37 year old man, assisted living facility resident, kicked in groin and stabbed with a paring knife by another resident.

35 year old man with mental illness, involved in a series of violent outbursts toward other patients, including dislocating the shoulder of an elderly patient.

23 year old woman, mental health institute patient, sexually assaulted while home on a weekend pass.

101 year old woman, nursing home resident, slapped by C.N.A. resulting in serious facial bruises.

There may be times when you observe signs of abuse but were not actually a witness to what happened. The tangible signs or indicators of abuse, neglect or exploitation described on the following pages tend to be ones that can be detected by trained observers such as facility staff members. More difficult to detect or to determine are intimidation and mental anguish. Residents who are ridiculed, maliciously teased, cursed at or threatened may fear retaliation if they speak up or complain about a family member, another resident or a member of the facility staff. It takes skill and sensitivity beyond that required for routine observation to find out if verbal abuse has occurred.

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## DEFINITIONS AND INDICATORS

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<b>Indicators of Physical Abuse:</b>	Physical assaults, cruel discipline, excessive use of physical or chemical restraints, or unnecessary or incorrect medication may cause any one of the following:
<b><i>Broken bones</i></b>	Pain and inability to move a limb may be a sign of a broken bone. This may occur when a resident with osteoporosis is handled roughly by visitors or staff. Broken bones in various stages of healing and spiral fractures may indicate abuse as well as fractures of the skull, nose or facial structure.
<b><i>Burns</i></b>	Burns and blistering skin over a wide area may show up because a resident was placed in a scalding hot tub of water. A more confined spot of burned skin may indicate purposeful burning with a cigarette. Rope burns on arms, legs, neck or torso may also indicate abuse.
<b><i>Cuts</i></b>	Cuts or scratches may result when a resident was jabbed with a sharp object such as a pencil or scratched with fingernails.
<b><i>Internal Injuries</i></b>	Watch for such signs as vomiting, pain, stuporous states, bleeding, swelling or bloody stools. You may observe any one or a combination of these if someone gave a resident alcohol or drugs that can cause sickness; or if someone overdoses a resident with anti-diarrhea medicine causing severe constipation; or if a blow to the stomach or head has caused internal injuries
<b><i>Marks/Bruises</i></b>	A resident may have a hand-print shaped bruise where a person slapped them across the face or buttocks. Multiple bruises in various stages of healing may indicate abuse. Look for injuries to the face, neck, inner arms, inner thighs, especially bilateral injuries on upper arms.
<b><i>Scars</i></b>	Scars could indicate that the resident has been a victim of repeated or past abuses.

## DEFINITIONS AND INDICATORS

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### Definition of Sexual Abuse

**"Sexual abuse or exploitation"** means contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's informed consent (22 MRSA §3472).

### Indicators of Sexual Abuse

A family member offers affectionate gestures to a resident that are too lingering and seductive or become centered on the sex organs, anus or breasts.

Injury to a resident's genitals, anus, breast or mouth.

A resident attempts to talk an incapacitated resident into sexual intercourse, fellatio, or cunnilingus.

A young resident tells you that her father manipulates her genitals, buttocks and breasts during his visits.

A staff member exposes his/her genitals to a resident.

A visitor takes nude photographs of residents.

Venereal disease, torn, stained or bloody underwear, difficulty walking or sitting, and pain or itching in genital area are all suspicious of sexual abuse.

### Definition of Exploitation

**"Exploitation"** means the illegal or improper use of an incapacitated or dependent adult or that adult's resources for another's profit or advantage (22 MRSA §3472).

### Indicators of Exploitation

A resident's relative, who is representative payee, fails to pay nursing facility or assisted living facility bills and provide personal needs money.

The facility administrator, who is a resident's representative payee, purchases furniture or clothing not intended for the resident.

A resident is manipulated into giving away money or personal property such as a TV, jewelry, or furniture.

Disappearance of personal property; transfer of property, savings, insurance; unexplained change in cash flow; change in will, representative payee, power of attorney; or depleted bank accounts may be suspicious of financial exploitation.

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## DEFINITIONS AND INDICATORS

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### Definition of Neglect

**"Neglect"** means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these (22 MRSA §3472).

### Definition of Self Neglect/Self Abuse

**"Self neglect/self abuse"** refers to persons who do not have the capacity to care for themselves due to their physical or mental impairment. This does not include persons who have capacity but have chosen an unsafe life style.

### Indicators of Neglect

Residents suffer from neglect when they are left alone, ignored by staff or left with staff who fail to care for them appropriately.

A group of assaultive residents have been left alone and unsupervised.

An aide has fallen asleep or is intoxicated while on duty.

A resident has bleeding gums and some loose teeth, indicating that a visit to the dentist is long overdue.

A resident is continually fearful about leaving her room and seems almost panicky when it's time to leave the facility for an outing. Staff "leave her be" rather than attempting to determine the cause of her fear.

A resident fell several days ago. Her ankle is swollen and bruised, and she complains of pain when walking. The resident's doctor or family were not notified of the fall immediately. X-rays taken several days after the fact reveal a fracture.

A resident is found to be dehydrated, have untreated bed sores or other unattended or untreated health problems.

## RISK FACTORS

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### Types of Abuse, Neglect and Exploitation

Abuse in facilities may occur in a variety of ways. Residents may abuse one another, or residents may be abused by facility staff or family members. Abuse may be an act of violence such as physical or sexual assault, or it may be verbal abuse, medication errors or failure to provide proper assistance resulting in injuries. Residents may be neglected by facility staff or family members. Residents may be exploited by facility staff, family members or other residents.

### Risk Factors

Risk factors for abuse can be related to facility employees, to conditions in the facility itself or to residents. Listed below are some factors which increase the risk of abuse. The more of them that are present in a situation, the greater the risk. There are also other forces which may contribute to a problem such as the season, holidays, reactions to family visits, weather and time of day. Being aware of what to watch for and averting a build up of such risk factors can help to prevent abuse.

### Employee Risk Factors

- \* Alcohol/drug abuse
- \* Chronic physical illness
- \* Excessive absenteeism
- \* Family problems/history of family violence
- \* Financial problems
- \* Insubordination/power conflicts/rivalry
- \* Mental illness
- \* Numerous disciplinary actions
- \* Poorly or inadequately trained
- \* Role reversal, e.g. looking to resident to fulfill the employee's needs
- \* Social isolation
- \* Tardiness/unexplained absences



**Resident Risk Factors**

- \* Argumentative
- \* Assaultive
- \* Demanding
- \* History of multiple incidents
- \* History of substance abuse
- \* Hostile
- \* Incompetent, organic brain syndrome (OBS), demented
- \* Incontinent
- \* Intrusive
- \* Manipulative
- \* Mute
- \* Passive/passive aggressive
- \* Sexual acting out behavior
- \* Verbally abusive

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## PREVENTION

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Preventing abuse, neglect and exploitation in facilities requires trained staff at all levels. In addition, staff must have administrative support to act to prevent abuse and to file proper incident reports. The following conditions may enhance the prevention of abuse, neglect and exploitation:

### Prevention

Facility administration communicates clearly and consistently that all residents and staff must be treated with dignity and respect.

Orientation and ongoing training programs are provided that develop appropriate attitudes in new employees and teach staff about resident behavior and needs.

Administrators and supervisors are competent, accessible to and supportive of staff.

Employees feel comfortable about discussing personal problems with their supervisors or facility administration. Administrators make appropriate referrals for counseling or assistance.

Staff who are becoming angry with a particular patient can request reassignment.

Staff have a pleasant and clean break room.

Staff have supplies and equipment necessary to do their jobs.

Staff deal with all incidents of abuse immediately. No level of abuse is tolerated.

Administrators and supervisors convey to staff and residents the importance of reporting suspected abuse, neglect or exploitation to the Department of Health and Human Services. (Note in the section on reporting that in addition to reporting to one's supervisor or the facility administrator, the staff person must also make a report directly to the Department).

Facility protects confidentiality of staff/resident reporters.

Facility administration and staff are aware of, understand the purpose of and call upon the Long-term Care Ombudsman Program for assistance. (See page 15 for program description).

Incidents of resident to staff abuse must be documented and brought to the attention of appropriate supervisory personnel. The staff member may choose to press charges in cases of assault. The facility is responsible for taking steps to address such abusive behavior on the part of the residents.

Maine law prevents facility owners or employees from being appointed as guardian or conservator or from acting as an agent under a power of attorney for health care for any resident unless the resident and the facility owner or employee are family members (18-A MRSA §5-311; 18-A MRSA §5-410 and 18-A MRSA §5-802).

<b>Mandatory Reporting:</b>	<p>Maine law (22 MRSA §3477-3479-A) requires that if any of the following individuals suspects that an adult has been abused, neglected or exploited, and there is reasonable cause to suspect that the adult is incapacitated or dependent, then that individual shall <b>immediately report</b> to the Department.</p>																								
<b>Professionals</b>	<p><b>Individuals who are mandated to report while acting in a professional capacity:</b></p> <table> <tr> <td>Ambulance Attendant</td><td>Mental Health Professional</td></tr> <tr> <td>Certified Nursing Assistant</td><td>Occupational Therapist</td></tr> <tr> <td>Chiropractor</td><td>Pharmacist</td></tr> <tr> <td>Clergy</td><td>Physical Therapist</td></tr> <tr> <td>Dentist</td><td>Physician (MD and DO)</td></tr> <tr> <td>Emergency Medical Technician</td><td>Physician's Assistant</td></tr> <tr> <td>Emergency Room Personnel</td><td>Podiatrist</td></tr> <tr> <td>Humane Agent</td><td>Psychologist</td></tr> <tr> <td>Law Enforcement Official</td><td>Registered Nurse</td></tr> <tr> <td>Licensed Practical Nurse</td><td>Social Worker</td></tr> <tr> <td>Medical Examiner</td><td>Speech Therapist</td></tr> <tr> <td>Medical Intern</td><td>Unlicensed Assistive Personnel</td></tr> </table>	Ambulance Attendant	Mental Health Professional	Certified Nursing Assistant	Occupational Therapist	Chiropractor	Pharmacist	Clergy	Physical Therapist	Dentist	Physician (MD and DO)	Emergency Medical Technician	Physician's Assistant	Emergency Room Personnel	Podiatrist	Humane Agent	Psychologist	Law Enforcement Official	Registered Nurse	Licensed Practical Nurse	Social Worker	Medical Examiner	Speech Therapist	Medical Intern	Unlicensed Assistive Personnel
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<b>Others</b>	<p><b>Other individuals who are mandated to report:</b></p> <p>Any other individual who has assumed full, intermittent or occasional responsibility for the care or custody of the adult, whether or not the individual receives compensation.</p>																								
<b>Facility reporting</b>	<p>The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report.</p>																								
<b>Optional reporting</b>	<p>Any person may make a report if that person knows or has reasonable cause to suspect abuse, neglect or exploitation of a dependent or incapacitated adult, or has reasonable cause to suspect that an adult is incapacitated.</p> <p>Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation.</p>																								

## MAINE'S REPORTING LAW

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### Where to Report

**Mandatory and optional reports are made by telephone** to the Department of Health and Human Services, Adult Protective Services. When the alleged victim has mental retardation, the report must be made to the Office of Adults with Cognitive and Physical Disability Services (OACPDS). (Phone numbers are on page 13 and 14).

A report made by telephone is usually sufficient, although the Department may request a mandated reporter to file a written report within 48 hours. Any report by a mandated reporter must include the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; his or her occupation; and where he or she can be contacted. The report may contain any other information which the reporter believes may be helpful.

### Immunity

When reports are made in good faith, reporters are immune from any civil liability. Facility staff who comply with the mandatory reporting law also are protected from discharge, threats or discrimination regarding their conditions of employment by their employers under Maine's "whistleblowers protection act" (26 MRSA §831-840).

### Confidentiality

The Department will respect a request for confidentiality. All department records and activities are confidential. Disclosure may be required in very limited circumstances.

### Public Wards

The Department, through the Office of Elder Services (OES), acts as public guardian for individuals who need a guardian and who do not have a private individual willing and suitable to assume the responsibility. For residents under public guardianship, OES needs to receive reports of:

- incidents such as serious and frequent falls or behavior outbursts;
- injuries resulting in hematomas, lacerations, pain or mental anguish; or
- any unusual circumstances involving the care and welfare of the ward.

These reports are made directly to the regional OES office (see phone numbers listed on page 12) or in cases of emergencies to 1-800-624-8464.

## INVESTIGATIONS OF REPORTS

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What happens after the incident or suspicion is reported to the Department depends on Maine law (Adult Protective Services Act, 22 MRSA §3470-3492) and on the policies and procedures governing the Department's operations.

### **Investigations by the Department**

When a report of alleged abuse, neglect or exploitation of a resident is made to the Department, OES is notified and will record the report and decide whether to assign the case for investigation. In general, a case will be assigned if any one of the following conditions exist:

- Resident was physically harmed, suffered pain or mental anguish and abuse or neglect was suspected.
- Resident's resources have been used or taken by a family member, another resident, or facility staff person.
- Resident was believed to be or was sexually abused or sexually exploited.
- Victim or perpetrator is incapacitated and may need a guardian or conservator.

### **Referrals to Law Enforcement**

Upon finding evidence indicating that a person has abused or neglected an incapacitated or dependent adult resulting in serious harm, or has exploited an incapacitated or dependent adult, the Department is required to notify the District Attorney or law enforcement. Suspected abuse, neglect or exploitation on the part of staff in licensed facilities is also reported to the Health Care Crimes Unit of the Attorney General's Office.

## Offices of OES Program Administrators for Protective Services

/ Region I	Cumberland, York	161 Marginal Way Portland Maine 04101 822-2149 1-800-482-7520 TTY: 1-800-606-0215 Fax: 822-2162
/ Region II	Androscoggin, Oxford, Sagadahoc, Kennebec, Somerset, Franklin, Waldo, Knox, Lincoln Counties	41 Anthony Avenue Augusta Maine 04333-0011 624-8060 1-800-452-1926 TTY: 1-800-606-0215 Fax: 624-5283
/ Region III	Penobscot, Piscataquis, Hancock, Washington and Aroostook Counties	396 Griffin Road Bangor Maine 04401 561-4380 1-800-432-7825 TTY: 1-800606-0215 Fax: 561-4396

## **Report Abuse, Neglect or Exploitation to:**

The Department of Health and Human Services  
Office of Elder Services

**ADULT PROTECTIVE SERVICES** at:  
**Nationwide toll-free 1-800-624-8404**  
**TTY 1-800-606-0215**

*This unit is mandated to investigate allegations of abuse, neglect or exploitation in a facility.*

## **Report suspected MaineCare fraud to:**

### **HEALTH CARE CRIMES UNIT**

6 State House Station,  
Cross Office Building 6th Floor  
Augusta, ME 04333  
626-8870    TTY 626-8865    Fax:287-3120

*This unit is mandated to investigate fraud perpetrated by MaineCare providers and situations where there are allegations of abuse, neglect or exploitation by staff in a facility that receives MaineCare.*

To make a report of abuse, neglect or exploitation of a person **with mental retardation**, call the **Office of Cognitive and Physical Disability Services (OCAPDS)**:

Portland Office, Region 1 (York & Cumberland )	207-822-0270 1-800-720-1925 (TTY)
Augusta Office, Region 2 (Kennebec & Somerset)	207-287-2205 1-800-606-0215 (TTY) 1-800-232-0944
Lewiston Office (Androscoggin, Franklin & Oxford)	207-753-9100 1-800-606-0215 (TTY) 1-800-866-1803
Thomaston Office (Knox, Lincoln, Sagadahoc & Waldo)	207-596-2300 1-800-606-0215 (TTY) 1-800-704-8999
Bangor Office Region 3 (Hancock, Piscataquis, Penobscot & Washington)	207-941-4360 1-800-606-0215 (TTY) 1-800-963-9491
Presque Isle Office (Aroostook)	207-554-2100 1-800-606-0215 (TTY) 1-800-767-9857

**For reporting after business hours, call the CRISIS NUMBER at  
1-888-568-1112**



## **LONG-TERM CARE OMBUDSMAN PROGRAM**

The Long-term Care Ombudsman Program investigates and resolves complaints made on behalf of residents of Maine's nursing facilities, assisted living facilities and recipients of home care and adult day services. Any person may ask for assistance from the Ombudsman Program on behalf of these individuals. The Ombudsman receives complaints directly from residents, from friends and relatives, employees and administrators, and public agencies and community groups. They include complaints about the quality of care that a resident receives in a long-term care facility, and about problems that residents have regarding eligibility for state programs, financial status, legal problems, and transfer assistance. The Ombudsman Program also provides training on resident rights and on federal and state regulations and identifies issues that may require legislative or regulatory changes.

If you feel that rights have been denied to any person in a long-term care facility, contact the Ombudsman Program at:

### **Long-term Care Ombudsman Program**

One Weston Court, PO Box 128  
Augusta, Maine 04332-0128

**207-621-1079 (Voice/TTY)**

**Toll Free Statewide 1-800-499-0229 (Voice/TTY)**

Fax: 621-0509

**Residents of nursing and assisted living facilities have certain rights.  
Included in these rights are the following:**

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**Resident  
Rights**

1. To voice grievances without fear of reprisal and receive a prompt response from the facility.
2. To exercise their rights as a resident and as a citizen.
3. To be free from mental and physical abuse and to be free from chemical and physical restraints.
4. To associate and communicate privately with persons of their choice.
5. To participate in social, religious, and community activities.
6. To have access to their personal and medical records, to be informed of their medical condition, to participate in planning their care and treatment.
7. To manage personal financial affairs.
8. To keep and use personal belongings as space permits.
9. To receive a reasonable accommodation by the facility for individual needs and preferences.
10. To choose activities, schedules and health care consistent with his/her interests, assessments and plan of care.
11. In any nursing facility or in a Residential Care facility with 5 or more beds, to organize and participate in a Residents' Council.
12. To have access to results of licensing surveys.

**Discharge rights  
in a nursing  
facility**

To be discharged or transferred only if the facility is unable to meet the resident's medical needs, if the resident's health has improved such that he/she no longer needs nursing home care, if the health or safety of other residents is endangered, or if the resident has failed, after reasonable notice, to pay for his/her stay in the facility. Discharge notice must be given in writing at least 30 days in advance or as soon as possible if more immediate changes in health require a more immediate transfer.

**Discharge rights  
in an assisted  
living facility**

To be discharged or transferred only if the resident's continued stay constitutes a direct threat to the health or safety of others; if the resident's intentional behavior has resulted in substantial physical damage to the property of the facility or others; if the resident has failed to pay for his/her stay in the facility or has violated admission contract obligations, despite reasonable attempts at problem resolution; or if the resident's continued stay would require the facility to modify the essential nature of the program. Discharge notice must be given in writing at least 30 days in advance or as soon as possible when an emergency situation exists.

For a complete listing of resident rights, call the Department of Health and Human Services or contact the Long-term Care Ombudsman Program.